

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL McGORE,

Plaintiff,

v.

Case No. 2:17-cv-11153
Hon. Denise Page Hood

BELLAMY CREEK CORRECTIONAL
FACILITY BUSINESS ACCOUNTANT
JANE DOE OR JOHN DOE, BARAGA
CORRECTIONAL FACILITY BUSINESS
ACCOUNTANT JANE DOE OR JOHN DOE, and
ALGER CORRECTIONAL FACILITY BUSINESS
ACCOUNTANT JANE DOE OR JOHN DOE,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF A TAX ATTORNEY
AND
DISMISSING THE COMPLAINT UNDER 28 U.S.C. § 1915(g)

This matter has come before the Court on plaintiff Darryl McGore's *pro se* civil complaint and motion for appointment of a *pro bono* tax attorney. Plaintiff is a state prisoner at the Baraga Maximum Correctional Facility in Baraga, Michigan. The defendants are unnamed business accountants at the Baraga correctional facility and two other correctional facilities in Michigan. The complaint appears to allege that, in 2016 and 2017, Plaintiff was charged tax on cosmetic items and postage stamps, which he purchased in the prison store. He now seeks a tax refund

on the basis that he was participating in an indigent welfare program and should not have been charged tax.

Plaintiff did not pay the filing fee for this action, and a review of federal court records indicates that more than three of Plaintiff's prior civil complaints have been dismissed as frivolous or for failure to state a claim. *See McGore v. Rich, et al.*, No. 1:09-cv-00395, Memorandum Op. Denying Leave to Proceed *In Forma Pauperis* - Three Strikes, page 3 (W.D. Mich. May 12, 2009) (collecting cases). In still other cases, Plaintiff was denied leave to proceed *in forma pauperis* because he had "three strikes." *See id.* (collecting cases).

A federal litigant who is too poor to pay court fees ordinarily "may commence a civil action without prepaying fees or paying certain expenses." *Coleman v. Tollefson*, 135 S. Ct. 1759, 1761 (2015) (citing 28 U.S.C. § 1915). Nevertheless,

a special "three strikes" provision prevents a court from affording *in forma pauperis* status where the litigant is a prisoner and he or she "has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted."

Id. (quoting 28 U.S.C. § 1915(g)). An exception to this rule applies when "the prisoner is under imminent danger of serious physical injury." 28 U.S.C. §

1915(g). “The imminent danger exception is essentially a pleading requirement subject to the ordinary principles of notice pleading.” *Vandiver v. Vasbinder*, 416 F. App’x 560, 562 (6th Cir. 2011).

Plaintiff has not alleged that he is in “imminent danger,” and nothing in the complaint suggests that he is in imminent danger of serious physical injury. Accordingly, the Court summarily dismisses the complaint without prejudice and denies as moot Plaintiff’s motion for appointment of a tax attorney (No. 2). The Court certifies that an appeal from this order would be frivolous and could not be taken in good faith or without prepayment of the appellate filing fee.

SO ORDERED.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: May 19, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 19, 2017, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager